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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Matthew F. Ackley et al.

Item:

NETWORK-BASED SALES SYSTEM WITH CUSTOMIZABLE USER INTERFACE

Docket No.:

2043.162US1
Filed: November 16, 1999
Examiner: Michael Roswell

Serial No.:

09/441,388
Due Date: January 7, 2006 (Sat.)
Group Art Unit: 2173

MS Appeal Brief - Patents

Commissioner for Patents
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Name

Peter Rebuffoni
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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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PATENT

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In re Application of: Matthew F. Ackley et al.

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APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on November 4, 2005 and received by the U.S. Patent Office November 7, 2005, from the Final Rejection of claims 27-29, 31-35, 38-40 and 42-46 of the above-identified application, as set forth in the Final Office Action mailed on August 10, 2005.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of 500.00 which represents the requisite fee set forth in 37 C.F.R. § 41.2(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, EBAY, INC., as evidenced by an assignment from the inventors to FAIRMARKET, INC. recorded April 17, 2000 at Reel 010748, Frame 0838 and an by an assignment from FAIRMARKET, INC. to EBAY, INC. recorded on March 3, 2004 at Reel 015026, Frame 0940.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on November 16, 1999 with claims 1-26. Claims 27-48 were added in response to the Non-Final Office Action mailed June 5, 2002. Claims 1-17, 20-26, 36-37 and 47-48 were canceled in response to the Final Office Action mailed December 31, 2002. Claims 30 and 41 were canceled in response to the Final Office Action mailed February 6, 2004. Claims 18-19 were canceled in response to the Non-Final Office Action mailed June 14, 2004. Claims 38 and 46 were amended responsive to the Final Office Action mailed August 10, 2005.

Claims 27-29, 31-35, 38-40 and 42-46 stand twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

Claims 38 and 46 were amended responsive to the Final Office Action mailed August 10, 2005. The Examiner has not yet indicated whether the claim amendments will be entered for the purpose of the appeal.

5. SUMMARY OF SUBJECT MATTER

Some example aspects of the present subject matter include, but are not limited to, a sales system and sales method for coupling to a communication network (e.g., Figure 1, Page 7, paragraph 1). For example, the sales system may be embodied as a network auction system 10 that includes member web sites M1, M2, and MN and an auction server system 12 (*Id.*). In one embodiment, the web sites M1, M2, and MN may be *operatively connected* to a network, such as the Internet (*Id.*). In addition, the example auction server system 12 may also be *operatively connected* to the network (*Id.*). Thus, each of the web sites (e.g., M1, M2, and MN) and the auction server system 12 may be *operatively connected* to the network (*Id.*).

Each of the web sites (e.g., M1, M2, and MN) may include a home page (e.g., H1, H2, ...HN) and a series of sub-pages (e.g., S11, S12,...; S21, S22...; and, SN1, SN2....). According to one embodiment, the home page and the sub-pages for a particular web site may include content that may be provided by a legal entity, such as a corporation (*Id.*). The example home pages and example sub-pages may be linked to together via a system of user-selectable hyperlinks (e.g., L11, L12...; L211, L22...; ... and, LN1, LN2) which may be created using a scripting language (e.g., HTML), according to one embodiment.

In one embodiment, users may access the home pages and the sub-pages and navigate between them using web browsers that communicate with the web sites, (Page 7, paragraph 2). For example, a user may use a browser to navigate between web pages by following (e.g., “clicking on”) links in the web page. In one embodiment, the user may utilize a pointing device, such as a mouse (*Id.*). The example browser may also provide an address line that allows a user to type in an address of a web page that may be formatted according to an appropriate protocol such as Hypertext Transfer Protocol (HTTP) or File Transfer Protocol (FTP) (*Id.*).

Each of the web sites (e.g., M1, M2, MN) may also include one or more links (e.g., LA1, LA2, ... LAN) to one or more respective auction home pages (e.g., A1, A2, ...AN) according to one embodiment (Page 7, paragraph 3). These example auction home pages may, in turn, include links to auction sub-pages, according to one embodiment

(Id.). Collectively, an auction home page and the sub-pages that correspond to the auction home page may be referred to as an auction site (Id.), according to one embodiment.

The example web pages for each of the auction sites may be generated by the auction server system 12 (Page 7, paragraph 4). Nevertheless, the example web pages may provide the impression to a user that the user may still be using the member website *through which the user accessed the web page* (Id.). Users may receive this impression because the network auction server 14 generates example auction pages that may be customized look and respond like the web pages of the web site *from which they are accessed*, according to one embodiment (Id.). Users also may receive this impression because example auction server system 12 may interface with the network through an address that is consistent with the address of the member web site *from which it is accessed* by DNS mapping of a subdomain name (Id., Page 8, paragraph 4).

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellants refer to the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 27-29, 31-35, 38-40 and 42-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlin et al. (U.S. 6,119,152; hereinafter Carlin) and “Domain Names – Concepts and Facilities” (hereinafter RFC 1034).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §103(a)

“To establish a *prima facie* case of *obviousness*, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure.”

In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991),

“To establish *prima facie obviousness* of a claimed invention, all the claim limitations must be taught or suggested by the prior art.”

MPEP 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

“All words in a claim must be considered in judging the patentability of that claim against the prior art.”

MPEP 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

B) The rejection of claims 27-29, 31-35, 38-40 and 42-46 was erroneous because the references relied upon in the Final Office Action do not teach or suggest every element of the claims at issue

Claim 27 includes the following limitations:

a first sales interface at a first network address...

a second sales interface at a second network address...

a sales server at a third network address that operates the first and second sales interfaces...

The Final Office Action contends that the above limitations are suggested by the following disclosure from Carlin:

To use an on-line service, the subscriber establishes a communications link to the provider of the on-line service over a communications line. A communications line is an electronic highway between two computers. The communications line can include...TCP/IP networks....

Carlin Col 1, lines 19-27;

The above quote describes a subscriber that establishes a communications link to a provider of an online service over a communications line. The communications line between the two computers can include a TCP/IP network.

Claim 27 requires a first sales interface at a first network address, a second sales interface at a second network address, and a sales server at a third network address, *the sales server at the third network address to operate the first and second sales interfaces.*

In contrast, the above quote from Carlin does not describe a first sales interface at a first network address, a second sales interface at a second network address, and a sales server at a third network address; rather, the above quote from Carlin describes the establishment of a communication line that can include a TCP/IP network. The Final Office Action suggests that the above quote from Carlin describes an embodiment that would require each sales interface and the host computer to be located at unique network addresses (Final Office Action, page 3). The above quote from Carlin makes no such requirement. Indeed, the Appellants reviewed Carlin and were unable to find a

description of such an embodiment. Nevertheless the following quote from Carlin may be relevant:

In the preferred embodiment, the host 12 is a network of mini- or micro-computers which are net-worked together.

Carlin Col. 5, lines 43-47.

The above quote from Carlin describes a host 12 that may be embodied as a network of computers. However, the above quote from Carlin fails to teach or even suggest how the functions that are performed by the host 12 (e.g., see Figure 2) may be distributed over such a network. Indeed, Carlin is silent with regard to the functions performed by the respective computers in the network. Carlin therefore cannot be said to teach or suggest the above quoted limitations because Carlin describes a host that may be embodied as a network of computers without describing the functions that are performed by the respective computers in the network. Claim 27 requires a first sales interface at a first network address, a second sales interface at a second network address, a sales server at a third network address, the sales server at the third network address operating the first and second sales interfaces.

The above remarks are also applicable to a consideration of independent claims 35, 38 and 46.

In light of the above, Appellants respectfully submit that the rejection under 35 U.S.C. § 103 has been overcome, and withdrawal of this rejection therefore respectfully requested.

8. SUMMARY

For the reasons argued above, the claims of the present application were not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlin in combination with RFC 1034.

It is respectfully submitted that the art cited does not render the limitations of the claims as taught or suggested and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claim are respectfully requested.

Respectfully submitted,

MATTHEW F. ACKLEY et al.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

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Date 1/9/2005

By

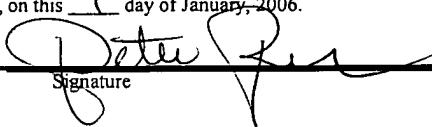


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Peter Rebuffoni
Name


Signature

CLAIMS APPENDIX

1.-26. (Cancelled)

27. (Rejected) A sales system for coupling to a communications network, comprising:

 a first sales interface at a first network address, the first sales interface including a first set of user interface elements;

 a second sales interface at a second network address, the second sales interface including a second set of user interface elements; and

 a sales server at a third network address that operates the first and second sales interfaces while providing an impression that they are being operated by different entities, wherein the sales server includes a customization interface responsive to user input to define the first and second sets of user interface elements, wherein the sales server is operative to create the impression that the sales interfaces are being operated by different domains by operating with the address of the first sales interface mapped to a first domain and the address of the second sales interface mapped to a second domain different from the first domain, and wherein the first sales interface includes links to a first set of pages not operated by the sales server but being mapped to the first domain, and wherein the second sales interface includes links to a second set of pages not operated by the sales server but being mapped to the second domain.

28. (Rejected) The system of claim 27 wherein the addresses of the first and second sales interfaces are mapped using DNS mapping.

29. (Rejected) The system of claim 27 wherein the first and second sales interfaces presented are each operative to present a plurality of linked pages.

30. (Cancelled)

31. (Rejected) The system of claim 27 wherein the first sales interface includes elements that are also included in the first set of pages and wherein the second sales interface includes elements that are also included in the second set of pages.

32. (Rejected) The system of claim 27 wherein the first sales interface includes a header that is also included in the first set of pages and wherein the second sales interface includes a header that is also included in the second set of pages.

33. (Rejected) The system of claim 27 wherein the first sales interface presented includes interface elements that include at least part of a name of the first domain, and wherein the second sales interface presented includes interface elements that include at least part of a name of the second domain.

34. (Rejected) The system of claim 27 wherein the first and second domains belong to different legal entities.

35. (Rejected) A sales system for coupling to a communications network, comprising:

- a first sales interface at a first network address, the first sales interface including a first set of user interface elements;
- a second sales interface at a second network address, the second sales interface including a second set of user interface elements; and
- a sales server at a third network address that operates the first and second sales interfaces while providing an impression that they are being operated by different entities, wherein the sales server includes a customization interface responsive to user input to define the first and second sets of user interface elements, wherein the customization interface is operative to provide different headers for the first sales interface and for the second sales interface, and wherein the first sales interface includes links to a first set of pages not operated by the sales server but being mapped to the first domain, and wherein the second

sales interface includes links to a second set of pages not operated by the sales server but being mapped to the second domain.

36.-37. (Cancelled)

38. (Rejected) A sales method for operation through a communications network, comprising:

receiving customization commands from a first accountholder;
receiving customization commands from a second accountholder;
presenting a first networked sales interface through the network for the first accountholder based on input received from the first accountholder;
presenting a second networked sales interface through the network for the second accountholder based on input received from the second accountholder, and
wherein the steps of presenting are performed by a provider for the accountholders, and present the first and second networked sales interfaces in such a way that they provide an impression that they are operated by the accountholders, and wherein the steps of present the first networked sales interface at a first domain and present the second networked sales interface at a second domain, and wherein the steps of presenting present the first networked sales interface as including links to a first set of pages not operated by the sales server but being mapped to the first domain, and present the second networked sales interface as including links to a second set of pages not operated by the sales server but being mapped to the second domain.

39. (Rejected) The method of claim 38 wherein addresses of the first and second networked sales interfaces are mapped using DNS mapping.

40. (Rejected) The method of claim 38 wherein the steps of presenting are operative to present each of the first and second networked sales interfaces as including a plurality of linked pages.

41. (Cancelled).

42. (Rejected) The method of claim 38 wherein the steps of presenting present elements in the first networked sales interface that are also included in the first set of pages and present elements in the second networked sales interface that are also included in the second set of pages.

43. (Rejected) The method of claim 38 wherein the steps of presenting present a header in the first networked sales interface that is also included in the first set of pages and present a header in the second networked sales interface that is also included in the second set of pages.

44. (Rejected) The method of claim 38 wherein the steps of presenting present the first networked sales interface as including interface elements that include at least part of a name of the first domain, and present the second networked sales interface as including interface elements that include at least part of a name of the second domain.

45. (Rejected) The method of claim 38 wherein the first and second domains belong to different legal entities.

46. (Rejected) A sales method for operation through a communications network, comprising:

- receiving customization commands from a first accountholder;
- receiving customization commands from a second accountholder;
- presenting a first networked sales interface through the network for the first accountholder based on input received from the first accountholder;
- presenting a second networked sales interface through the network for the second accountholder based on input received from the second accountholder, and
- wherein the steps of presenting are performed by a provider for the accountholders, and present the first and second networked sales interfaces in such a way that they provide an

impression that they are operated by the accountholders, and wherein the steps of presenting present the first networked sales interface as including links to a first set of pages not operated by the sales server but being mapped to the first domain, and present the second networked sales interface as including links to a second set of pages not operated by the sales server but being mapped to the second domain.

47.-48. (Cancelled)

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.